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# Memo

**TO:** Mayor Dennis Johnson and City Council

**FROM:** Steve D. Smith, City Attorney

**DATE:** April 28, 2011

**RE:** Action Requested Related to Contingent Loan Agreement for Town Toyota Center

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Staff is requesting a motion by the Council authorizing the Mayor and Staff to pursue a Contingent Loan Agreement with the Greater Wenatchee Regional Events Center Public Facilities District (“PFD”) in support of the PFD’s future bond issuance to refinance its 2008 Bond Anticipation Notes subject to final Council approval and further subject to judicial validation pursuant to the bond validation statute, RCW 7.25, or alternatively the declaratory judgment statute, RCW 7.24, or such other authorities as may be applicable.

The City entered into an Interlocal Agreement with the PFD on September 6, 2006, in which the City agreed to execute a Contingent Loan Agreement to provide security for all or a portion of the bonds to be issued by the PFD to finance the Regional Events Center. The key provision of the September 6, 2006, Interlocal Agreement reads as follows:

“The City agrees to execute a Contingent Loan Agreement, in a form approved by the PFD, to provide security for all or a portion of the bonds to be issued by the PFD to finance the Regional Events Center. The PFD, in consultation with the underwriters of the bonds and the rating agency rating the bonds and any bond insurer, shall determine whether all or a portion of the bonds to be issued should be secured by the Contingent Loan Agreement. The Contingent Loan Agreement shall provide that to the extent that sales taxes and operating income received by the PFD is insufficient to cover operating and maintenance expenses of the Regional Events Center and pay principal of and interest on the bonds issued for the Regional Events Center, the City shall pay the portion of the principal of and interest on such bonds not covered by such taxes or income. The City shall pledge its full faith and credit to the repayment of such bonds. The City agrees to execute such other financing documents that may be

required to enable the PFD to issue bonds for the Regional Events Center.”

On November 13, 2008, the City entered into a Contingent Loan Agreement to support short term Bond Anticipation Notes issued by the PFD to purchase the Regional Events Center. The November 13, 2008 Contingent Loan Agreement requires the City to loan money to the PFD for interest payments only in the event the PFD has insufficient funds to make the interest payments on two of the three the Bond Anticipation Notes. The Bond Anticipation Notes are due in full on December 1, 2011. The PFD Staff and City Staff have been discussing the steps necessary to redeem the Bond Anticipation Notes. The goal is to issue long term bonds at favorable terms for the PFD. The PFD will need a Contingent Loan Agreement from the City to support the bond issuance. The bond issuance will be approximately \$43,000,000, of which approximately \$6,000,000 will be supported by the sales tax rebate revenue.

Contingent loan agreements issued by government entities are typically not considered debt. This is an important consideration because the City has a non-voted debt limit of 1.5% of the total assessed valuation of the real property within the city limits. The City’s current non-voted debt capacity is approximately \$22,000,000. If the Contingent Loan Agreement was considered “debt” of the City, the amount of the bond issuance backed by the Contingent Loan Agreement would exceed the City’s non-voted debt capacity. When the City entered into the Contingent Loan Agreement for the Bond Anticipation Notes on November 13, 2008, the Regional Events Center was brand new and had just started operations. At the time the City did not expect to be required to fully fund the interest on the Bond Anticipation Notes or any long term bonds that might later be issued. Moving forward to 2011 the Regional Events Center has experienced nearly three years of operation and we know that the Center has generated only enough income to meet its operating expenses. There has not been extra income after operating expenses to pay towards debt service. It appears the City would have to loan money under a proposed Contingent Loan Agreement in such amounts as to cover the entire debt service, both principal and interest, at least for the foreseeable future. Under these circumstances, the question arises as to whether or not a proposed Contingent Loan Agreement would be truly “contingent,” or whether it could be considered “debt.” If considered “debt,” the amount of debt backed by the proposed Contingent Loan Agreement would exceed the City’s non-voted debt capacity.

The law is not crystal clear on the issue of whether or not the proposed Contingent Loan Agreement would be “debt” under the circumstances we now have. Absent an opinion from independent bond counsel for the City that the proposed Contingent Loan Agreement is not debt, we recommend that the City and PFD seek a determination of the validity of the Contingent Loan Agreement pursuant to the bond validation statute, RCW 7.25, or alternatively through the declaratory judgment process of RCW 7.24, and other legal authority. This recommendation has been formulated with the assistance of Arley Harrel of Williams Kastner, and bond counsel, Roy Koegen, of Koegen Edwards. We mutually think it best that the City and the PFD have certainty on this issue before executing the proposed Contingent Loan Agreement.

Our goal would be to have the Contingent Loan Agreement and the bonds validated by the court prior to the due date for the Bond Anticipation Notes which is December 1, 2011.

Therefore, we are asking the Council to:

1. Authorize Staff and the Mayor to pursue a Contingent Loan Agreement with the Public Facilities District to back a long term bond issuance that would pay off the 2008 Bond Anticipation Notes subject to final Council approval; and
2. Authorize Staff to seek a judicial validation of the bonds and the proposed Contingent Loan Agreement.